APPENDIX

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APPENDIX A.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

TEXAS-EMPIRE PIPE LINE CO. ET AL., P. E.

v.

TULSA COUNTY, OKLAHOMA, EXCISE BOARD, D. E.

No. 29,210

Syllabus

1. An independent school district to which area of another district, in whole or in part, is attached, does not become liable for the bonded indebtedness or outstanding unpaid obligations to which such attached area was liable before the annexation, the taxes for such obligations can still be levied against the property so annexed, notwithstanding that by such annexation such property also becomes burdened with a share of the obligations of the independent district.
2. The Court of Tax Review does not have jurisdiction to determine legality of application of tax levy to specific property or to review the acts of an excise board as to the valuation of properties, where the levy made thereon is a legal levy.

Appeal from the Court of Tax Review. Hon. Tom P. Pace, F. Hiner Dale and Jesse J. Worten, Judges.

This action originated in the Court of Tax Review, wherein protestants jointly filed a protest against the Excise Board of Tulsa County, protesting the levy set up by the Excise Board against the property located within what formerly was the bounds of Dependent School District No. 4, Independent School District No. 28, Independent School District No. 12, and Consolidated School District No. 1 of Tulsa County, for fiscal year 1938-39.

AFFIRMED.

Mastin Geschwind for Plaintiff in Error.

Dixie Gilmer, County Attorney, John F. Conway, Assistant County Attorney, Rosenstein & Rinehart for Defendant in Error.

WELCH, C. J.

The Court of Tax Review dismissed the protest for lack of jurisdiction, protestants appeal.

The petition in error sets out four grounds of protest, numbered 19, 20, 21 and 22; all grounds are for the same reason, therefore, we will treat them as one.

The protestant contends that the Court of Tax Review erred when it dismissed all four grounds for lack of jurisdiction, his protest being in substance that the rate of levy fixed by excise board to pay obligations of four separate school districts which had been annexed to another district, said obligations having been incurred before the annexation, were illegal. Protestants' reasons *therefore* being that the certificates of assessed valuation, and the procedure followed by the Excise Board in arriving at the valuation were unlawful, and that the obligations originally incurred by said disorganized school districts had become finally fixed as charges against all property in the Independent District of which they became a part by the annexation.

Prior to July 1, 1938, dependent school district No. 4, independent school district No. 12; independent school district No. 28, and consolidated school district No. 1, had been annexed to independent school district No. 22 of Tulsa County. On July 1, 1938, each of the above annexed districts still had outstanding unpaid bonded debts, which were incurred prior to their annexation.

Prior to July 1, 1938, the outstanding bonded indebtedness of these annexed districts had been added to and considered a part of the sinking fund obligations of Independent School District No. 22, as enlarged after the annexation.

The Excise Board of Tulsa County caused levies to be certified against the property in the four annexed districts, for the fiscal year commencing July 1, 1938, for the purpose of creating a fund to pay the interest and meet at maturity the bonded indebtedness outstanding against these four annexed districts.

At the request of the Excise Board the assessor prepared a certificate, which gave a valuation on real estate, personal property, the property of corporations, and the

property of public service corporations in each of the annexed districts. As to public service corporations the assessor used the 1926 valuation in three of the annexed districts, and the 1933 valuation in one of them. These were the years the districts were annexed to district No. 22, respectively, and were the last years for which there was available a valuation certified by the State Board of Equalization or the Oklahoma Tax Commission as to the property of public service companies within the area of these annexed districts.

After making a careful study of the brief and the authorities cited in support of the contentions of the petitioners in error, we find that the question before this court is not one pertaining to an illegal levy, but is one of an alleged illegal application of the levy.

We have heretofore held that obligations incurred in one school district cannot be removed from the property of such district by annexing such property to an independent district, but taxes for such obligations can still be levied against the property so annexed, notwithstanding that by such annexation such property becomes burdened with a shar*t* of the obligations of the independent district of which it becomes a part by the annexation. *Missouri-Kansas-Texas Ry. Co.* v. *Bryan County Excise Board,* 181 Okla. 229, 73 Pac. (2d) 173; *Protest of St. L. S. F. Ry. Co.,* 164 Okla. 229, 23 Pac. (2d) 699; *In re: Protest of St. L. S. F. Ry. Co.,* 136 Okla. 265, 277 Pac. 932.

Therefore the levy made by the Excise Board of Tulsa County against property within the bounds of the four districts as they were before the annexation, to pay obligations outstanding against them at the time of the annexation was a legal levy. Whether the Excise Board proceeded in accordance with the law in arriving at the valuation of the property within the bounds of what had been the four separate districts, the Court of Tax Review was without jurisdiction to determine.

The jurisdiction of the Court of Tax Review is limited to a consideration only of alleged illegal levies, by section 12306, O. S. 1931, 68 Okla. St. Ann., Sec. 332. Said Court of Tax Review therefore has no authority to consider the

alleged illegal application of a valid tax levy to specific property. *M. K. & T. Ry. Co.* v. *Cowden, Co. Treas.*, 184 Okla. 260, 86 Pac. (2d) 776; *Muskogee County Excise Board* v. *Stubbs et al.*, 172 Okla. 435, 45 Pac. (2d) 721; *Protest of First National Bank of Guthrie*, 136 Okla. 141, 276 Pac. 766; *In re*: *Gibbens et al.*, 142 Okla. 180, 286 Pac. 318; *Protest of First National Bank of Enid*, 143 Okla. 115, 287 Pac. 1043.

In considering the motion to dismiss filed herein by defendants in error, the movant has cited for his authorities *Atchley* v. *McFadden*, 178 Okla. 303, 64 Pac. (2d) 269; *Ingram* v. *Groves et al.*, 84 Okla. 159, 202 Pac. 1019. We are of the opinion that these cases would be inapplicable as to the plaintiff in error herein, therefore, the motion to dismiss is denied.

Judgment of the Court of Tax Review is affirmed.

Riley, Corn, Gibson and Danner, Concur.

Osborn and Davison, JJ., Concur specially.

Hurst, J., Dissents.

Bayless, V. C. J., Absent.

APPENDIX B.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

PUBLIC SERVICE COMPANY OF OKLAHOMA, P. E.

v.

JOE T. PARKINSON, County Treasurer, Tulsa County, Oklahoma, D. E.

No. 30,852.

Syllabus

1. When ad valorem taxes are paid under protest (Sec. 12665, O. S. 1931, similar to 68 O. S. 1941, Sec. 15.50), and suit is brought for recovery thereof on the theory that the assessment of taxpayers' property was void on account of the method of making it, absent any contention or claim that taxpayer did not in fact own property of the taxable situs and value stated, the burden is on plaintiff to clearly show invalidity of the assessment, and on failure to so show, judgment is properly rendered for defendant.

Appeal from the District Court of Tulsa County, Oklahoma. Hon. Harry L. S. Halley, Judge.

Action by Public Service Company to recover ad valorem taxes paid under protest. From judgment for defendant, the plaintiff appeals.

AFFIRMED

Mastin Geschwind, Oklahoma City, Okla., for Plaintiff in Error.

C. H. Rosenstein, Dixie Gilmer, County Attorney of Tulsa County, Oklahoma; Wm. M. Taylor, Assistant County Attorney, all of Tulsa, Oklahoma, for Defendant in Error.

WELCH, J.

In this action the taxpayer seeks to recover $8,088.71 taxes paid under protest. The tax was levied in 1938 for the benefit of the sinking funds of former school districts No. 4, No. 12, No. 28 and No. 1 in Tulsa County. The amount plaintiff seeks to recover is the total amounts so levied against its property for that purpose.

Prior to the levy the said school districts had been annexed by and had become a part of school district No. 22 of

Tulsa County. At the time of the levy the taxable property within the respective areas of such annexed districts was liable to taxation for retirement of prior indebtedness. *M. K. & T. Ry. Co.* v. *Excise Board of Bryan County*, 181 Okla. 229, 73 Pac. (2d) 173. The legality of the rate of levy has been established. *Texas-Empire Pipe Line Co.* v. *Tulsa County Excise Board*, 187 Okla. 591, 104 Pac. (2d) 441.

The theory of plaintiff's case is that its taxable property within such area was not assessed. That the valuations and assessments as made to appear upon the tax rolls of Tulsa County by the county assessor are void. Plaintiff does not contend that it did not own taxable property within such areas equal to the respective valuations as shown by such rolls.

In its return of property for tax purposes plaintiff merely reported that it owned certain taxable property located in school district No. 22 as it then existed. The State Auditor certified to the county treasurer that the State Board of Equalization had assessed plaintiff's property in School District No. 22 at $4,902,400. *No further details relating to the action of the State Board was contained in the auditor's certificate.*

After the receipt of such certificate the county assessor caused his tax rolls to show taxable property belonging to plaintiff as assessed within the geographical areas of the first named former school districts as follows:

No. 4	$ 51,140
No. 12	32,661
No. 28	1,948,787
No. 1	17,079

It is plaintiff's position that the State Board of Equalization has exclusive power to assess its property; that such board failed to specify the assessed value in each of the several areas, which resulted in a total failure to assess the same in such four areas for the purposes here shown, and that the County Assessor has no power to cause his tax rolls to appear as shown, because he had no authority to assess this character of property.

No reported case similar in fact has been called to our attention. We have, however, some well established legal principles from the cited cases and others which guide us in considering the present issues. We take it as elementary that the law does not intend to deliberately aid a property owner to escape payment of his just proportion of taxes which his taxable property should bear. Should plaintiff's contentions here be sustained, including its suggestion that its property cannot now be assessed, then this property, though its taxable value and physical situs is not contested, would completely escape this legally levied tax.

It is true that certain formalities must be observed in the subjecting of property to taxation. This is so in the interest of an orderly system, and probably of more importance, in the protection of the individual taxpayer. *Frazier* v. *Prince*, 8 Okla. 253, 58 Pac. 751, and *Oklahoma Tax Commission* v. *Rittenhouse*, 176 Okla. 291, 55 Pac. (2d) 70.

Though in *Independent Pipe Line Co.* v. *State Board of Equalization*, 168 Okla. 432, 33 Pac. (2d) 797, it was held that a record of an assessment, appearing on the tax rolls as prepared by the county assessor, was not void, though the property should have been assessed by the State Board of Equalization and it seems there admitted that such board took no action.

One of the most important acts in subjecting property to tax is the matter of assessment, and that is the step with which we are here concerned. The assessment, to become invulnerable, must be made by the officer or officers clothed with lawful authority so to do. 26 R. C. L., p. 354, para. 311. This is so in the interest of an orderly system and to provide an *authorative* forum before which the owner may be heard for his protection. Such authority in this state is vested in the State Board of Equalization with respect to this character of property. Sec. 21, Art. 10, Okla. Constitution, 68 O. S. 1941, Sec. 131; *Osage & Oklahoma Company* v. *Millard, Co. Treas.*, 45 Okla. 334, 145 Pac. 797.

If there is shown here any act of omission or commission, which is in violation of a direct and mandatory statu-

tory provision, or which has had the effect of depriving this owner of a fundamental and substantial right, then our conclusion should be in its favor without regard to whether its property does or might completely escape the tax. Otherwise no such result should obtain. *Board of Com'rs of Tulsa County* v. *Sutton*, 185 Okla. 665, 95 Pac. (2d) 648, and *Bonaparte, Co. Treas.* v. *American Vinegar Mfg. Co.*, 161 Okla. 54, 17 Pac. (2d) 441.

Minute perfection of detail is not required. 61 C. J., page 737, para. 919, states the general rule as follows:

> "Unless there has been a failure to observe a mandatory statutory requirement intended for the protection of the taxpayer, the validity of an assessment roll, which is substantially correct, is not affected by errors, omissions, or irregular entries, which do not affect the substantial justice of the tax nor prejudice the rights of the taxpayer."

Our statutes required that this taxpayer submit data in writing to the assessing board; Chap. 104, page 208, S. L. 1933, Sec. 12409, O. S. 1931. It is clearly contemplated thereby that all necessary data be thus disclosed to enable the board to make a complete assessment. That return or report should include a disclosure of all taxable property owned, its value and situs. *This record does not contain a copy of the return or report filed in this connection, but it is conceded that plaintiff thereby disclosed all its taxable property located in school district No. 22 as enlarged by the annexations. We are not advised of the minuteness of detail with which it was so shown. It is conceded, however, that the return did not disclose any effort or intention to further segregate the specific items of the property to lesser areas within the then district No. 22.*

Thus this property came under actual scrutiny of the assessing board and was officially acted upon by it, and it doubtless did, as was its duty, inform itself fully as to situs, extent and value of all such property.

The final record of that board's action appears in the tax rolls of the several counties as completed by the county assessors.

The State Auditor performs the ministerial function of informing the county assessor of the board's action. Sec. 12410, O. S. 1931. The county assessor is the proper ministerial official of the board and of the state, who performs the duty of completing the tax roll, which then becomes the final record of assessment. Sec. 12411, O. S. 1931. *We agree that the county assessor is without power to make a record contrary to the action of the assessing board, or that he has discretionary powers of assessment in such a case as this.*

The record made by him in this case, however, is not shown to be in conflict with the action of the State Board. This appeal record contains no proof that the assessing board affirmatively fixed the taxing situs of this property other than as reflected by the final tax rolls as made to appear by the proper officer, the County Assessor.

These final tax rolls did reflect a further segregation of the total valuation beyond that shown by the state auditor's certificate, but it does not result in direct conflict therewith. Had the taxpayer been dissatisfied with the record of the state assessing board as made by the county assessor, we have no doubt that it might have applied for a correction. Apparently it was either satisfied that the final record so made did in fact reflect the action taken by the State Board, or was willing to let the final record so stand, or was willing to allow an error which it had induced to remain uncorrected. In such case, the taxpayer will not be heard to complain in this kind of suit where no actual definite injury is claimed or shown.

In the Bonaparte v. American Vinegar case, *supra*, it was held:

> "A petition filed in a proceeding commenced under section 9971, C. O. S. 1921 (O. S. 1931, Sec. 12665), which does not allege facts showing wherein the party commencing the action was injuriously affected by reason of the failure of the county assessor *to publish* notice *containing the name and assessed value of the personal property of such party* as required by section 9664, C.

O. S. 1921, does not state facts sufficient in law to constitute a cause of action."

Having concluded that the record of the assessment as shown by the completed tax rolls is not shown to have been made in conflict with or contrary to the conclusions of the State Board of Equalization, and that therefore no void assessment has been shown, and plaintiff having failed to plead or prove any injury, fraud or collusion, we consider the rule of the Bonaparte case applicable here.

Affirmed.

All Justices concur.